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CHRISTOPHER L. FOX

August 19, 2019

Via ECF

Honorable Robert B. Kugler
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Re: United States v. Kristie Masucci
Crim. No.: 18-616 (RBK)

Dear Judge Kugler:

As Your Honor is aware, this firm represents Defendant Kristie Masucci ("Mrs. Masucci") in the above-referenced matter. Sentencing is scheduled for 10:00 a.m. on August 20, 2019. We write to respectfully request the Court strike the Government's sentencing reply submission and disregard it in its entirety.

In accordance with the District of New Jersey's July 7, 2000, Standing Order ("Standing Order") regarding sentencing, the Government submitted its sentencing memorandum on August 5, 2019. Standing Order (f)(1). Mrs. Masucci submitted her sentencing memorandum and motion for departure and variance on August 9, 2019, one day earlier than required by the Standing Order. *Id.* at (f)(2). To ensure the Government had adequate time to respond, Mrs. Masucci e-mailed a copy of that submission to the Government on August 9, 2019. Pursuant to the Standing Order, the Government's reply to Mrs. Masucci's submission was due no later than August 15, 2019. *Id.* at (f)(3). Despite providing the Government an extra day to prepare its reply, the Government did not submit its reply until 3:28 p.m. on August 19, 2018, approximately eighteen (18) hours before Mrs. Masucci's sentencing.

Mrs. Masucci respectfully submits that this Honorable Court must strike the Government's sentencing reply submission and disregard it in its entirety. First, the Government's extremely tardy reply clearly violates the District of New Jersey's July 7, 2000 Standing Order regarding sentencing. The Standing Order even provides that the Court may modify the time periods set

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forth in the Standing Order for good cause shown. *Id.* at (g). Despite the ability to petition the Court for an extension of time to submit its reply, the Government chose not to do so. The Government did not request Mrs. Masucci's consent to submit a later reply, nor did it so much as apprise Mrs. Masucci that it intended to submit a reply on the eve of sentencing. The Government's blatant disregard for the Standing Order and complete lack of common courtesy to Mrs. Masucci warrant striking the Government's reply submission and disregarding it in its entirety.

Second, the Government's reply violates the well-established rule prohibiting parties from raising new issues and/or arguments for the first time in reply papers. *See Money v. Bristol-Myers Squibb Co.*, No. CIV 307CV-1100 FLW, 2009 WL 5216987, at *10 (D.N.J. Dec. 30, 2009) (citing *Merling v. Horizon Blue Cross Blue Shield of New Jersey*, No. 04-4026, 2009 WL 2382319, *10, n.5 (D.N.J. Jul.31, 2009) (declining to address issue raised for first time in reply brief)). The Government's belated reply improperly contains new issues and/or arguments the Government is raising for the first time. As such, the Court should decline to address any of the issues and/or arguments inappropriately contained in the Government's untimely reply submission.

Third, the Government's extremely tardy reply severely prejudices Mrs. Masucci. However, it would not just severely prejudice Mrs. Masucci if the Court addressed or entertained the Government's reply, it would violate Mrs. Masucci's constitutional due process right. Mrs. Masucci's counsel should not be expected to respond to issues and/or arguments inexcusably raised by the Government on the eve of sentencing. Therefore, the Court should strike the Government's reply submission and disregard it in its entirety.

Thank you for Your Honor's kind consideration of this request.

Respectfully submitted,

s/ Amy Luria

AMY LURIA

cc: R. David Walk, Jr., Assistant U.S. Attorney (via ECF)